

REPORT OF THE COMMITTEE ON ZONING, PLANNING AND HOUSING

Voting Members:

Ron Menor, Chair; Tommy Waters, Vice-Chair;
Brandon J.C. Elefante, Ann H. Kobayashi, Joey Manahan

Committee Meeting Held
February 27, 2020

Honorable Ikaika Anderson
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning, Planning and Housing, which considered Bill 60 (2019) entitled:

"A BILL FOR AN ORDINANCE RELATING TO AFFORDABLE RENTAL HOUSING,"

which passed Second Reading and was the subject of a Public Hearing held at the December 4, 2019 Council meeting, reports as follows:

The purpose of Bill 60 (2019) is to amend Ordinance 19-8, which established a temporary program under a new chapter of the Revised Ordinances of Honolulu 1990 ("ROH"), to facilitate the development of affordable rental housing in the apartment, apartment mixed use, and business mixed use zoning districts, by relaxing certain zoning and building code standards, and providing for certain financial incentives.

At your Committee's meeting on February 27, 2020, the Acting Director of the Department of Planning & Permitting ("DPP") and the DPP Transit-Oriented Development ("TOD") Administrator offered comments on the Bill.

American Savings Bank and two individuals testified in support of the CD1 version of the Bill proposed by Committee Chair Menor. Three individuals offered comments on the Bill.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON **MAY 20 2020**

COMMITTEE REPORT NO. **99**

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Your Committee received written testimony in support of the Bill in its original form from First Hawaiian Bank and Central Pacific Bank. Written testimony in support of Committee Chair Menor's proposed CD1 version of the Bill was received from one individual. Island Business Management Hawaii and the Building Industry Association of Hawaii submitted comments on the Bill.

Your Committee prepared a CD1 version of the Bill that makes the following amendments:

- A. The as-introduced Bill deletes from numerous provisions of Ordinance 19-8 the requirement that affordable rental housing units be rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning a specified percent (100 percent or 80 percent) of the AMI for the applicable household size or less. The CD1 retains these requirements by removing all of these proposed deletions, but provides that the rental rate limits only apply for a period of 15 years after a certificate of occupancy is issued for the affordable rental housing project. The amended SECTIONS of the Bill are as follows:
 - 1. SECTION 2 of the Bill, by revising the definitions of "Affordable rental housing project" and "Affordable rental housing unit" and the proposed amendment to paragraph (2) of the definition of "Declaration of restrictive covenants."
 - 2. SECTIONS 6, 7, 8, and 9 of the Bill, by revising respective provisions relating to the waiver of wastewater system facility charges, the waiver of plan review and building permit fees, an exemption from payment of real property taxes for affordable rental housing units, and a tax holiday (real property taxes would be kept at the current assessment during the project's construction and marketing period).

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- B. In SECTION 2 of the Bill, revises the definition of "Declaration of restrictive covenants" to delete the provision referring to requirements for affordable rental housing projects developed on real property owned by the State Department of Education.
- C. In SECTION 4 of the Bill, provides that certain special district requirements do not apply if the assessed value of the existing buildings on the proposed affordable rental housing project site does not exceed 30 percent of the assessed value of the land (instead of an exception from certain special district requirements for all affordable rental housing projects).
- D. In SECTION 5 of the Bill, deletes provisions relating to a marketing period for affordable rental housing projects developed on real property owned by the State Department of Education.
- E. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee on Zoning, Planning and Housing is in accord with the intent and purpose of Bill 60 (2019), as amended herein, and recommends that it pass Third Reading in the form attached hereto as Bill 60, (2019), CD1. (Ayes: Kobayashi, Menor, Waters – 3; Ayes with reservations: Elefante – 1; Noes: None; Excused: Manahan – 1.)

Respectfully submitted,



Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON **MAY 20 2020**

COMMITTEE REPORT NO. **99**



A BILL FOR AN ORDINANCE

RELATING TO AFFORDABLE RENTAL HOUSING.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to address affordable rental housing.

SECTION 2. Section __-1.1, Revised Ordinances of Honolulu 1990 ("Definitions"), as enacted in SECTION 2 of Ordinance 19-8, is amended by amending the definitions of "Affordable rental housing project," "Affordable rental housing unit," and "Declaration of restrictive covenants" to read as follows:

"Affordable rental housing project" means a multifamily dwelling₁ containing only dwelling units₁ that meets all of the following criteria:

- (1) (A) At least 80 percent of the total units are rented to households earning 100 percent and below of the AMI₁; and
(B) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100 percent of the AMI for the applicable household size [~~or less~~];
- (2) No more than 20 percent of the total units in the affordable rental housing project are occupied by the property owners or individuals who are related by blood, marriage, or adoption to the property owners;
- (3) Households occupying affordable rental housing units must have a lease for the unit with a minimum six month term, and a prohibition against subleasing;
- (4) All leases for dwelling units must allow the lessee to terminate the lease early if the lessee or any member of the lessee's family residing with the lessee is rendered unable to access the unit by reason of an accident or medical condition;



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- (5) The fee owners of the land on which an affordable rental housing project is situated shall execute a declaration of restrictive covenants, and shall file a copy thereof with the department of planning and permitting prior to the issuance of a building permit for the affordable rental housing project; and
- (6) A certification must be filed annually with the director of budget and fiscal services using a form provided by the director of budget and fiscal services, affirming that at least 80 percent of the total units in the affordable rental housing are affordable rental housing units and no more than 20 percent of the total units in the affordable rental housing are occupied by the property owners or individuals who are related by blood, marriage, or adoption to the property owners.

"Affordable rental housing unit" means a unit in an affordable rental housing project that ~~[is]~~:

- (1) ~~Is~~ rented to a household earning 100 percent and below of the AMI~~[-]~~; and
- (2) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100 percent of the AMI for the applicable household size~~[or less]~~.

"Declaration of restrictive covenants" means the declaration of covenants, conditions, and restrictions in a form approved by the director of budget and fiscal services and executed by the fee owners of the land on which an affordable rental housing project is situated, which at a minimum provides that:

- (1) The land and all improvements thereon are subject to the affordable rental housing requirements of this chapter;
- (2) The land or a portion thereof may qualify for a real property tax exemption during the exemption period ~~[if]~~:
 - (A) If rented to households earning 80 percent or below of the AMI~~[-]~~; and



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- (B) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 80 percent of the AMI for the applicable household size~~[-or less];~~
- (3) Excluding any portion of the ground floor of the affordable rental housing project that is designated for commercial use if commercial use is otherwise permitted by the underlying zoning, mixed use projects are prohibited;
- (4) The property on which an affordable rental housing project is situated may only be submitted to a condominium property regime pursuant to HRS Chapter 514B or any successor statute if it contains a ground floor commercial use that is permitted by the underlying zoning of the property; provided further that the only condominium units created are one condominium unit for the ground floor commercial portion of the project and one condominium unit for the residential portion of the project, and the one condominium unit for the residential portion of the project must not be further divided into separate condominium units; and
- (5) Violation of the declaration of restrictive covenants is subject to the enforcement provisions of Chapters 8 and 21."

SECTION 3. Section __-1.6, Revised Ordinances of Honolulu 1990, ("Violation - Penalty"), as enacted in SECTION 2 of Ordinance 19-8, is amended by amending subsection (a) to read as follows:

- "(a) If the director of planning and permitting determines that the use of the affordable rental housing project is abandoned; or that an owner, or the heir, successor, or assign of the owner is violating any provision of Article 2, the violator will be subject to the administrative enforcement provisions of Section 21-2.150-2; provided that in addition to the civil fines specified in Section 21-2.150-2(b)(1)(C) and 21-2.150-2(b)(1)(D), the violator will be subject to ~~[a civil fine equal to ten times the amount of the real property tax assessed for the years of noncompliance.]~~ penalties equal to the following amounts:



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- (1) The differences in the amount of taxes that were paid and those that would have been due but for the exemption for affordable rental housing units pursuant to Section 8-10.X(b)(4);
- (2) The differences in the amount of taxes that were paid and those that would have been due but for the exemption for qualifying construction work pursuant to Section 8-10.Y(a)(2);
- (3) The amount of wastewater system facility charges waived for affordable rental housing units pursuant to Section 14-10. (a)(4);
- (4) The amount of plan review and building permit fees waived for the affordable rental housing units pursuant to Section 18-6.5(i); and
- (5) The value of the park dedication requirements waived for the affordable rental housing units pursuant to Section 22-7.3(i)(4);

together with a penalty in the form of interest at 10 percent per annum on the amounts imposed under subdivisions (1), (2), (3), (4), and (5), from the dates that the respective payments would have been due, but for the exemption or waiver."

SECTION 4. Section __-2.1, Revised Ordinances of Honolulu 1990, as enacted in SECTION 2 of Ordinance 19-8, is amended to read as follows:

"Sec. __-2.1 Administration.

The director of planning and permitting, or the director's duly appointed representative, shall administer this article. Unless specifically modified in this article, the permitted uses, development standards, and other requirements of Chapters 21, 21A, 22, 23, and 25 apply to affordable rental housing projects; provided that the special district requirements pursuant to Sections 21-9.20 through 21-9.90-6 and related exhibits do not apply to affordable rental housing projects if the assessed value of the existing buildings on the proposed affordable rental housing project site does not exceed 30 percent of the assessed value of the land. In the event of a conflict between applicable provisions, the provisions of this article will prevail."



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SECTION 5. Section __-2.2, Revised Ordinances of Honolulu 1990, as enacted in SECTION 2 of Ordinance 19-8, is amended to read as follows:

"Sec. __-2.2 Permitted uses.

Affordable rental housing projects are a permitted use in the apartment, apartment mixed use, and business mixed use zoning districts, and in the apartment precinct, including the apartment mixed use subprecinct, of the Waikiki special district, pursuant to Chapter 21."

SECTION 6. Section 14-10.__, Revised Ordinances of Honolulu 1990, ("Waiver of wastewater system facility charges for affordable dwelling units"), as enacted in SECTION 4 of Ordinance 18-1 and amended by SECTION 3 of Ordinance 19-8, is amended by amending subsection (a) to read as follows:

"(a) Wastewater system facility charges, as set forth in Appendix 14-D of this chapter will be waived for the following:

- (1) Affordable dwelling units as defined in and as provided on-site or off-site pursuant to Chapter A;
- (2) Affordable dwelling units provided pursuant to a planned development-transit permit pursuant to Section 21-9.100-10, or an interim planned development-transit permit pursuant to Section 21-9.100-5;
- (3) Affordable rental dwelling units developed in compliance with HRS Section 201H-36(a)(5); or
- (4) Affordable rental housing units that ~~are~~:
 - (A) Are rented to households earning 100 percent and below of the AMI~~[-]~~; and
 - (B) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100 percent of the AMI for the applicable household size ~~[or less]~~;

pursuant to Chapter B."



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SECTION 7. Section 18-6.5, Revised Ordinances of Honolulu 1990 ("Exemptions"), as enacted in SECTION 5 of Ordinance 18-1 and amended by SECTION 4 of Ordinance 19-8, is amended by amending subsection (i) to read as follows:

"(i) The building official shall waive the collection of the plan review and building permit fees for the portion of an affordable rental housing project equal to the percentage of affordable rental housing units that ~~are~~:

- (1) Are rented to households earning 100 percent and below of the AMI~~],~~ and
- (2) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100 percent of the AMI for the applicable household size ~~[or less];~~

pursuant to Chapter B."

SECTION 8. Section 8-10.X, Revised Ordinances of Honolulu 1990 ("Exemption—Qualifying affordable rental dwelling units or affordable rental housing units"), as enacted in SECTION 2 of Ordinance 18-1 and amended by SECTION 6 of Ordinance 19-8, is amended by amending subsection (b) to read as follows:

"(b) This section applies only to the following:

- (1) That portion of real property used for affordable rental dwelling units as provided on-site or off-site pursuant to Chapter A;
- (2) That portion of real property used for affordable rental dwelling units provided pursuant to a planned development—transit permit under Section 21-9.100-10, or an interim planned development—transit permit under Section 21-9.100-5;
- (3) That portion of real property used for affordable rental dwelling units located on real property used in connection with a housing project developed in compliance with HRS Section 201H-36(a)(5); or



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(4) That portion of real property used for affordable rental housing units that ~~[are];~~

(A) Are rented to households earning 80 percent and below of the AMI~~[-];~~ and

(B) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 80 percent of the AMI for the applicable household size ~~[or less.]~~

pursuant to Chapter B."

SECTION 9. Section 8-10.Y, Revised Ordinances of Honolulu 1990 ("Exemption—During construction work for and marketing of affordable dwelling units or affordable rental housing projects"), as enacted in SECTION 3 of Ordinance 18-1 and amended by SECTION 7 of Ordinance 19-8, is amended by amending subsections (b) and (c) to read as follows:

"(b) Any incremental increase in the valuation of the real property primarily attributable to qualifying construction work will be exempt from property taxes, provided that:

(1) The qualifying construction work creates affordable dwelling units pursuant to Chapter A;

(2) The qualifying construction work creates affordable dwelling units pursuant to a planned development–transit permit pursuant to Section 21-9.100-10, or an interim planned development–transit permit pursuant to Section 21-9.100-5;

(3) The real property is developed in compliance with HRS Section 201H-36(a)(5); or

(4) The qualifying construction work creates affordable rental housing units that ~~[are];~~

(A) Are rented to households earning 100 percent and below of the AMI~~[-];~~ and



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(B) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100 percent of the AMI for the applicable household size ~~[or less];~~

pursuant to Chapter B.

(c) A claim for exemption must be filed with the director of budget and fiscal services on or before September 30th preceding the first tax year for which the exemption is claimed on a form as may be prescribed by the director, and must be supported by documentation establishing the date of the issuance of the building permit for demolition, if applicable, or the building permit for new buildings or portions thereof, additions, or substantial rehabilitations, and documenting the creation of ~~[affordable];~~

(1) Affordable dwelling units pursuant to Chapter A; ~~[a]~~

(2) A planned development–transit permit pursuant to Section 21-9.100-10; ~~[an]~~

(3) An interim planned development–transit permit pursuant to Section 21-9.100-5; ~~[affordable]~~

(4) Affordable rental dwelling units pursuant to HRS Section 201H-36(a)(5); or ~~[affordable]~~

(5) Affordable rental housing units that ~~[are];~~

(A) Are rented to households earning 100 percent and below of the AMI~~[-];~~ and

(B) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100 percent of the AMI for the applicable household size ~~[or less];~~

pursuant to Chapter B."



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SECTION 10. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. In SECTIONS 3, 5, 6, 7, and 8 of this ordinance, the Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b):

- (1) Replace references to "Chapter A" with the appropriately designated chapter and sections enacted by Ordinance 18-10;
- (2) Replace references to "Chapter B" with the appropriately designated chapter enacted by Ordinance 19-8;
- (3) Replace references to "Section 8-10.X" and "Section 8-10.X(b)(4)" with the appropriately designated section enacted by SECTION 2 of Ordinance 18-1; and
- (4) Replace references to "Section 8-10.Y" and "8-10.Y(a)(2)" with the appropriately designated section enacted by SECTION 3 of Ordinance 18-1.

SECTION 11. Effective date; repeal. This ordinance takes effect upon its approval and will be repealed on the repeal date of Ordinance 19-8, provided that:

- (1) Any real property tax exemption authorized pursuant to Section 8-10.X(b)(4) in SECTION 7 of this ordinance, and pursuant to Section 8-10.Y(b)(4) in SECTION 8 of this ordinance will apply to tax years beginning July 1, 2020 and thereafter; and



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- (2) The amendments made by this ordinance and the repeal thereof do not affect the respective repeal dates of Ordinances 18-1 and 19-8.

INTRODUCED BY:

Ron Menor (br)

DATE OF INTRODUCTION:

October 31, 2019

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu